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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 268.

GEORGE C. BENNETT,
Petitioner,

v.

JULIUS DE GEETER,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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THE COURT PRESS, N. Y. C.

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Opinions of the Court Below.

The opinion of the New Jersey Court of Errors and Appeals, filed May 24, 1943, is reported in 133 N. J. Eq. 349 and appears in the record, page 449. The opinion of the New Jersey Court of Chancery is not officially reported but is printed in the record, page 11.

Jurisdiction.

The petition for Certiorari was filed August 17, 1943; it invokes the jurisdiction of this Court under Section 344 of title 28 of United States Code (Judicial Code Section 237 as amended).

The decision of the Court of Errors and Appeals of New Jersey was rendered on May 18, 1943 and the final decree of that court was filed on May 24, 1943. Further jurisdictional facts are stated in the petition (pp. 4, 5).

Constitutional Provisions Involved.

The 14th Amendment of the U. S. Constitution, provides:

> "Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

In *Twining* v. *New Jersey*, 211 U. S. 78, this Court said at page 110:

> "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction, *Pennoyer* v. *Neff*, 95 U. S. 714, 733; *Scott* v. *McNeal*, 154 U. S. 34; *Old Wayne Life Association* v. *McDonough*, 204 U. S. 8."

The Constitution of the State of New Jersey, Article VI, provides:

> "The Judicial power shall be vested in a Court of Errors and Appeals in the last resort in all causes as heretofore; a Court for the trial of impeachments; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts, and such Inferior Courts as now exist, and as may be hereafter ordained and established by law; which Inferior Courts the Legislature may alter or abolish as the public good shall require."

The Court of Errors and Appeals of New Jersey has held that

> "By the system of courts set up in New Jersey under the constitution, article 6, section 1, the jurisdiction of the equity and common law courts is separate and distinct. The common law courts have exclusive jurisdiction to hear and determine contro-

versies resting upon a purely legal basis and determined by the principles of the common law such as a money claim or a simple debt and the like, whether due or not.

The jurisdiction of equity courts cannot be conferred over this class of subjects, by consent of counsel or acquiescence of a Vice-Chancellor. The Court of Chancery was not competent to adjudicate the claim."

San Giacomo v. *Oraton Inv. Co.*, 103 N. J. Eq. 273.

See also

Richman v. *Schwartz*, 130 N. J. Eq. 495.

The question of the constitutional limitation of the jurisdiction of the Court of Chancery of New Jersey is more fully discussed hereinafter.

Statement.

A statement of the case is contained in the petition (pp. 1-4).

Specification of Errors to Be Urged.

1. The New Jersey Court of Errors and Appeals has deprived petitioner of due process and the equal protection of the laws in that it affirmed the decree of the Court which determined petitioner's legal rights and enjoined the prosecution of petitioner's prior action at law, notwithstanding that

(a) The Court of Chancery, by its conclusion that petitioner was a mere employee, divested itself of the power to determine the legal issues raised in petitioner's prior pending action in the Supreme Court,

(b) The Court of Chancery exceeded its jurisdiction in assuming to determine the legal rights of the petitioner and its adjudication as to petitioner's legal rights is void as being beyond the power of the Court of Chancery to make, and is not due process,

(c) The jurisdiction of the Court of Chancery was limited to a determination of the relationship of the parties and the enforcement of petitioner's equitable rights, if any; Chancery's determination that the relationship was legal and the denial of equitable relief cannot estop petitioner from prosecuting his action at law wherein he seeks legal relief.

2. The New Jersey Court of Errors and Appeals erred in holding that petitioner is barred from proceeding at law by reason of an election of remedies.

3. The affirmance by the Court of Errors and Appeals of the injunction against the action at law is indubitably a violation of due process and a deprivation of the equal protection of the laws since it prevents petitioner from recovering the reasonable value of his services upon *quantum meruit,* which legal right was asserted in the prior pending action at law and the issues thereunder were not raised in Chancery.

The errors urged by petitioner before the Court of Errors and Appeals of New Jersey are set forth in the Petition of Appeal (R., pp. 2-7).

The questions presented upon this application are stated in the Petition, page 5. The grounds relied on for the granting of the writ of certiorari are set forth in the Petition, pages 5, 6.

POINT I.

Having determined that the relationship of the parties was legal and not equitable and having denied petitioner equitable relief, the Court of Chancery of New Jersey was without jurisdiction, under the New Jersey State Constitution, to continue the cause or to determine petitioner's legal rights, and its decree and the affirmance thereof by the New Jersey Court of Errors and Appeals constitute a denial of due process of law and the equal protection of the laws.

The issues in the action in the New Jersey Supreme Court, the trial of which has been enjoined by the decree complained of, are purely legal issues, namely, for damages for breach of contract and for the reasonable value of petitioner's services (R., p. 39). No legal relief was sought by either party in the Court of Chancery. That court in determining that the relationship between the parties was that of employer and employee thereby held that the issue of what, if anything, was owing to the petitioner for his services, was a purely legal issue.

The Supreme Court of New Jersey wherein petitioner's prior action was pending at the time the action in Chancery was brought by respondent was competent under the New Jersey State Constitution to determine the legal issues.

Accordingly, it is clear that petitioner sought the proper remedy in the first place. His rights were legal and not equitable. The issues raised by his action at law were cognizable by the law courts. Chancery had no jurisdiction under respondent's bill and Chancery's jurisdiction under petitioner's counterclaim was wholly dependent upon a determination that the relationship between the parties was equitable and not legal.

When the Court of Chancery determined that the relationship was legal and not equitable and denied equitable

relief, it was wholly without jurisdiction and power to determine the legal rights of the petitioner as asserted in the prior pending action at law.

The exclusive jurisdiction over legal issues of courts of law as opposed to the Court of Chancery over equitable issues in New Jersey has been defined by the Court of Errors and Appeals of New Jersey in the case of *San Giacomo* v. *Oraton Inv. Co., supra,* which was a suit for an accounting. The Court held that the jurisdiction of the equity courts does not exist and cannot be conferred over money claims or simple debts whether due or not due and that the Court of Chancery was not competent to adjudicate the claim. The Court said at page 274:

> "We think the bill should have been dismissed on the ground that the Court of Chancery had no jurisdiction over the subject matter. It could not hear and determine a pure legal question cognizable by the common law courts. The appropriate remedy is by a suit at law.
>
> * * *
>
> The first requisite to constitute jurisdiction is that the Court must have cognizance of the class of cases to which the one to be adjudged belongs.
>
> This principle is elementary and needs no citation of cases."

The denial by the Vice Chancellor to the petitioner of equitable relief, terminated the right of the Court of Chancery to proceed further. Since the Vice Chancellor found that the relationship of the petitioner was that of an employee and not a partner, and denied him relief in equity, the Court of Chancery was wholly without jurisdiction to further restrain the action at law and, equally without power and jurisdiction to determine the legal rights of the parties. The New Jersey Court of Errors and Appeals in the case of *Soper* v. *Conly,* 107 N. J. Eq. 537, and the New Jersey Court of Chancery in the case of

Collier v. *Collier* (N. J. Ch.), 33 Atl. 193 (not officially reported) firmly establish the rule that upon a denial of equitable relief the Court of Chancery is without jurisdiction to decide legal issues which under the Constitution of the State of New Jersey are solely cognizable in the law courts of that State.

See also—

Trotter v. *Heckscher*, 40 N. J. Eq. 612;
Phillips v. *Pullen*, 45 N. J. Eq. 157;
Logan v. *Flattau*, 73 N. J. Eq. 222, citing *Welsh* v. *Bayaud*, 21 N. J. Eq. 186;
30 Corpus Juris Secundum, at page 427;
Freeman on Judgments, 5th Edition, Vol. 2, page 1252.

For extensive correlation of authorities see Note 19 L. R. A. (N. S.) 1064; at page 1065 the note states:

> "Although a few cases are found which can be characterized only as variants from the general rule, the preponderance of opinion in relation to the subject under consideration clearly seems to be that where a case for relief in equity fails, a court of equity is without jurisdiction to award other relief by way of disposing of the entire controversy; unless, indeed, it appears that the remedy at law will be inadequate. Otherwise, as the courts have frequently pointed out, a litigant, by a pretended claim for equitable relief, might deprive his opponent of advantages incident to an action at law."

In 19 Am. Jur. page 132, it is stated:

> "If the facts which are relied on to sustain equity jurisdiction fail of establishment, the court may not retain the case for the purpose of administering legal relief."

In the case of *Welsh* v. *Bayaud*, 21 N. J. Eq. 186, the court said of the complainant's request that a decree be made that the defendant repay money paid on account of a contract the specific performance of which was sought (p. 187):

> "The Complainant may have the right to recover this money, but his remedy is at law, not in equity. * * * The complainant having failed on his only ground for equitable relief, cannot have his suit retained for granting a relief to which he is only entitled at law."

In *Soper* v. *Conly, supra,* the Court of Errors and Appeals of New Jersey stated at page 538:

> "To give and continue in the court below, jurisdiction, it was necessary that the fraud alleged should be established. Appellants having failed in this direction the court of chancery was without jurisdiction to proceed further and the bill of complaint should then have been dismissed. Notwithstanding this the learned vice chancellor proceeded to hear and pass upon the question of the title to the lands contracted to be conveyed. While we do not stand in disagreement with him, upon the proofs, as to the result reached in this respect, nevertheless, under the circumstances, he exceeded the jurisdiction of the court in which he was sitting."

A recent authority in support of the proposition that Chancery will not take jurisdiction where there is an adequate remedy at law is *Kolodny* v. *Quality Bilt Furniture Co. Inc.*, 131 N. J. Eq. 248, wherein it is stated of the defendant's claim, on page 249:

> "Essentially his claim, if established, would be nothing more than an action for damages and breach of contract * * *"

"* * * His remedy, if any, is at law on the contract."

The Court of Errors and Appeals of New Jersey in *Stein* v. *Elizabeth Trust Co.*, 126 N. J. Eq. 399, said in part (p. 403):

> "The action, simply stated, was for the recovery of a judgment based upon a debt arising by implication of law * * *. The relation of a bank to a trustee-depositor is that of creditor and debtor. *New Amsterdam Casualty Co.* v. *National Newark and Essex Banking Co.*, 117 N. J. Eq. 264, 271; affirmed, 119 N. J. Eq. 540, and this *relationship, per se, gives rise to no equitable consideration.*" (Italics mine.)

Due process of law has been defined by this Court as requiring "That the court which assumes to determine the rights of parties shall have jurisdiction". *Twining* v. *New Jersey*, 211 U. S. 78, 110; *Pennoyer* v. *Neff*, 95 U. S. 714, 733; *Scott* v. *McNeal*, 154 U. S. 34; *Old Wayne Life Association* v. *McDonough*, 204 U. S. 8.

In *Scott* v. *McNeal*, 154 U. S. 34 at page 46, this Court said:

> "No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.
>
> The words, 'due process of law', when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject matter of the suit; and, if that involves merely a

determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.' *Pennoyer* v. *Neff*, 95 U. S. 714, 733."

In Zoline's Federal Appellate Jurisdiction and Procedure. Rights and Forms. Third Edition. Page 168, Section 298 it is stated:

"Due Process" applied to judicial proceedings.

"The system 'due process of law,' when applied to judicial proceedings mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. *To give such proceedings any validity, there must be a tribunal competent by its Constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit;* and if that involves merely a determination of the personal liability of the defendant, he must be brought within the jurisdiction by service of process within the State, or his voluntary appearance."

In *Reynes* v. *Dumont*, 130 U. S. 354, this court said at page 395:

"It was held in *Lewis* v. *Cocks*, 23 Wall. 466, that if the court, upon looking at the proofs, found none at all of the matters which would make an appropriate case for equity, it would be the duty of the court to recognize the fact and give it effect, though not raised by the pleadings nor suggested by counsel. To the same effect is *Oelrichs* v. *Spain*, 15 Wall. 211."

In *Louisville Trust Co.* v. *Comingor*, 184 U. S. 18 at page 25, this court said:

"Jurisdiction as to the subject-matter may be limited in various ways, as to civil and criminal cases;

cases at common law or in equity or in admiralty; probate cases, or cases under special statutes; to particular classes of persons; to proceedings in particular modes; and so on. In many cases jurisdiction may depend on the ascertainment of facts involving the merits, and *in that sense the Court exercises jurisdiction in disposing of the preliminary inquiry, although the result may be that it finds that it cannot go farther.* And where in a case like that before us, the court erroneously retains jurisdiction to adjudicate the merits, its action can be corrected on review." (Italics mine.)

POINT II.

The adjudication by the Court of Chancery of petitioner's legal rights being void as constitutionally beyond its jurisdiction, its decree permanently restraining the trial of those rights in a law court of competent jurisdiction deprived petitioner of his rights without due process of law and denied him the equal protection of the laws.

By reason of the injunction of the Court of Chancery which has been affirmed by the Court of Last Resort of the State of New Jersey, petitioner is deprived of his day in a court of competent jurisdiction. Petitioner having failed to establish his right to equitable relief, the Court of Chancery was without jurisdiction to determine petitioner's legal rights. Chancery's assumption of such jurisdiction was unconstitutional and its determination is therefore a nullity and of no effect.

The injunction prevents a determination in a court of competent jurisdiction of petitioner's legal rights. Petitioner originally sought relief at law (R., p. 39). In the law action he asserted legal rights and asked for legal relief (R., pp. 46, 47). The Court of Chancery decided

that petitioner's rights, if any, were of a legal nature. The law is settled that when the Court of Chancery denied equitable relief, that court was without jurisdiction to determine the legal rights of the petitioner.

Only in the event that the Court of Chancery found that a partnership or joint adventure, in fact, existed, would it have had the power and jurisdiction to determine "how much, if anything" was due petitioner from respondent. In other words, there was no prayer for general relief in petitioner's counterclaim (R., p. 83, par. 7) nor was there any issue raised thereunder as to "how much, if anything, was due" except in the event a partnership or joint adventure was found, by the Court of Chancery, to have existed between the parties.

Once the Court of Chancery determined the petitioner was a mere employee, the Chancellor, under the New Jersey State Constitution and under the decisions of the Court of Chancery and the Court of Errors and Appeals of New Jersey, was wholly without power and jurisdiction to retain the cause and determine the purely *legal* issue, as to an employee's right to compensation for services. Furthermore, there was no proof before the Court of Chancery as to petitioner's legal right to damages for breach of contract nor as to the reasonable value of his services nor could such proof have been properly offered before that Court.

Even if the determination by the Vice Chancellor that there was no express contract as claimed by petitioner were conclusive, nevertheless, in any event the petitioner cannot be deprived of his right to enforce his claim for the reasonable value of his services. Such a claim was included in his prior pending action at law. The second count in the complaint therein is upon *quantum meruit.*

The issues under the second count for *quantum meruit* in the action at law were not raised in Chancery and it would have been improper so to raise them. No proof was before the Vice Chancellor as to the value of petitioner's services.

An action on *quantum meruit* is different and distinct from an action for breach of an express agreement. *Kirkpatrick* v. *McElroy*, 41 N. J. Eq. 531, see also *Freeman on Judgments*, 5th Ed., Section 736:

> "Failure to recover in an action on an express contract does not bar an action on an implied contract arising from the transaction."

The exclusive jurisdiction of the New Jersey Supreme Court to determine all legal issues raised under petitioner's action at law is established by the decisions of the New Jersey courts relied on and referred to under Point I.

THE PETITIONER CANNOT BE DENIED RELIEF IN CHANCERY AND AT THE SAME TIME ENJOINED FROM PROCEEDING AT LAW.

In *Collier* v. *Collier* (N. J. Chan.), not officially reported, 33 At. Rep. 193, at page 193, it is said:

> "When an action at law is sought to be restrained by suit in equity, and part of the grounds upon which the bill rests are purely of equitable cognizance, and part, when considered separately, are strictly of legal cognizance, and the proofs do not establish the allegations which are of purely equitable cognizance, a court of equity has not jurisdiction to further restrain the action at law, and proceed to determine the legal rights of the parties. * * *"
>
> "A moment's reflection will satisfy every one that nothing could be more mischievous than the adoption of the principle contended for by the complainant. In such case it would only be necessary for the defendant in an action at law to make some pretense of claim against the plaintiff in such action of fraud, mistake, accident, or right to an account, in order to change the forum of litigation, and to compel the determination of questions purely legal in a court of equity" (p. 194).

In *Dowell* v. *Mitchell*, 105 U. S. 430 at page 432, this Court stated:

> "The rule is that where a cause of action cognizable at law is entertained in equity on the ground of some equitable relief sought by the bill, which it turns out cannot, for defect of proof or other reason, be granted, the court is without jurisdiction to proceed further, and should have dismissed the bill without prejudice." (Citing cases.)

The courts of New Jersey cannot take away all remedy for the enforcement of petitioner's right to compensation for his services. "To take away all remedy for the enforcement of a right is to take away the right itself. *Poindexter* v. *Greenhow*, 114 U. S. 270, 303.

It follows therefore that since the Court of Chancery was without jurisdiction to determine the issues raised under petitioner's action at law, its decree preventing a determination of petitioner's legal rights by the Supreme Court, which under the New Jersey State Constitution is exclusively vested with such jurisdiction, is violative of the Fourteenth Amendment of the Constitution of the United States in that such injunction deprives the petitioner of the equal protection of the laws and of the right to due process of law.

POINT III.

Petitioner Made No Election of Remedies.

The New Jersey Court of Errors and Appeals, in its majority opinion held that petitioner had made an election of remedies (R., p. 453). This was not so. It cannot be said that petitioner abandoned his action at law. The record discloses that he repeatedly raised the jurisdictional question (R., pp. 54, 105, 194, 199, 23) nor can it be said that the Court of Chancery had jurisdiction by reason of petitioner's counterclaim.

Petitioner's counterclaim did not submit petitioner's legal rights to the Court of Chancery. It asked that the Court of Chancery determine whether petitioner's rights were equitable, and, if it so determined (R., 82, par. 3) that such equitable rights be enforced. Neither by affirmative action nor by consent, nor by acquiescence, did petitioner attempt to submit his rights, if legal, to the jurisdiction of that Court. Even if petitioner had done so, that Court would not have acquired jurisdiction. The settled rule is that jurisdiction cannot be conferred by consent of counsel nor by reason of the acquiescence of a vice chancellor.

San Giacomo v. *Oraton Inv. Co., supra;*
Richman v. *Schwartz, supra:*
M. C. & L. M. Railway Co. v. *Swan,* 111 U. S. 379.

In *Boro of West Long Branch* v. *Hoch,* 99 N. J. Eq. 356, the court stated:

> "It is enough to say in disposing of the contention that counsel cannot, by mere silence or by express consent, confer upon courts of equity the power to determine litigated matters which, under our judicial system, must be settled in a court of law; or, stated in another way, strip the law courts of jurisdiction conferred upon them under the constitution and transfer it to courts of equity."

In 18 Am. Jur. page 152, it is stated that—

> "No election of remedies occurs where the equity suit proves fruitless or unavailable" citing *Mills* v. *Parkhurst,* 126 N. Y. 89.

Even if petitioner had himself gone into chancery originally alleging an equitable relation he would not be estopped from thereafter instituting an action at law if Chancery had determined that the relationship was not in fact equitable.

The choice of a fancied remedy and the futile pursuit of it because either the facts turn out to be different from what the parties supposed them to be or the law applicable to the facts is found to be other than supposed and although the first action proceeds to judgment does not preclude the plaintiff from thereafter invoking the proper remedy.

Ash Sheep Co. v. *U. S.*, 252 U. S. 159 wherein the Court said at page 170:

> "Rejection of a claim because pursued in an action in which it cannot be entertained does not constitute an estoppel against the pursuit of the same right in an appropriate proceeding."

In *Barton* v. *Silver*, 107 N. J. Eq. 314, it was held that where remedies in several courts are different, jurisdiction in one is not effected by proceeding in another.

Mere election of remedies is not an irrevocable choice between alternative and inconsistent substantive rights and is not a bar to the later pursuit of the proper remedy.

Schenk v. *State Line Telephone Co.*, 238 N. Y. 308;
U. S. v. *Oregon Lumber Company*, 260 U. S. 290;
Clark v. *Kirby*, 243 N. Y. 295;
Dickson v. *Patterson*, 160 U. S. 584.

Chancery's jurisdiction was limited to the original inquiry as to jurisdiction (*Louisville Trust Co.* v. *Comingor*, 184 U. S. 18, 25). When it found no equitable relationship, the Court of Chancery "cannot go farther."

Therefore under Chancery's own finding, there was only one remedy available to the petitioner, and that was his action at law which was and is pending in the Supreme Court.

CONCLUSION.

It is clear, therefore, that, under the Constitution of the State of New Jersey the Court of Chancery was wholly without jurisdicion and power to determine the purely legal claim of the petitioner for damages for breach of contract and for the reasonable value of his services upon *quantum meruit* as such rights are legal and exclusively cognizable by the New Jersey Supreme Court in which petitioner's prior action is pending and which petitioner is enjoined from prosecuting by injunction of the Court of Chancery which has been affirmed by the New Jersey Court of Errors and Appeals.

It is equally clear that the affirmance by the New Jersey Court of Errors and Appeals of the decree of the Court of Chancery perpetually enjoining and restraining the prosecution of petitioner's action at law deprived petitioner of due process of law and of the equal protection of the laws in violation of the 14th Amendment of the Constitution of the United States.

The writ of certiorari should be granted and upon final hearing the final decision and decree of the New Jersey Court of Errors and Appeals affirming the decree of the Court of Chancery and the decree so affirmed should be reversed, set aside and for nothing holden.

August 17, 1943.

Respectfully submitted,

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